

matter. The Examiner should have made this rejection in the first Office Action back in July of 2006 in order to avoid delays in prosecution. See MPEP §2106(II). Thus, the Examiner's rejection is untimely. Notwithstanding this, the claims plainly recite systems and methods that produce useful, concrete, and tangible results and structures and, therefore, are clearly constitute patentable subject matter.

Independent Claim 1 recites that the earlier steps in the method are used "to generate a benchmark value relating to the identified asset characteristic." This step of the claimed method is clearly a useful, concrete, and tangible result. Independent Claims 9 and 19 each define the invention as including, among other things, (1) a plurality of assets, (2) a plurality of organizations; (3) a benchmarking information pool, and (4) a benchmark heuristic. Each of these claimed items constitutes a useful, concrete, and tangible element of the invention. Thus, the Examiner's rejection under 35 U.S.C. 101 is untenable and should be withdrawn.

The Examiner also rejected Claims 1, 9, and 19 under 35 U.S.C. 112, second paragraph, as being indefinite because the scope of the term "asset characteristic" was unclear. These rejections are respectfully traversed. At Paragraph 155 of the specification, it is stated that an "asset characteristic 404 is a type of attribute relating to an asset 31. Different types of assets 31 can have some identical characteristics (e.g. most assets can have an asset type characteristic; some similar characteristics (e.g. most assets will have financial and accounting characteristics); and some totally different characteristics (e.g. a computer will not have a characteristic relating to the carrying capacity of a forklift). The valid forklift identifiers listed above are examples of potential asset characteristics." Thus, the Examiner's rejection under 35 U.S.C. 112, second paragraph, is clearly untenable and should be withdrawn.

The Examiner continued the rejection of Claims 1-19 under 35 U.S.C. 103(a) as being obvious in view of the combined teachings of the Joao and Bond references. These rejections are respectfully traversed. In the Request For Reconsideration filed on September 19, 2007, it was discussed in detail that the Examiner's rejections under 35 U.S.C. 103(a) were inappropriate because (1) the Bond reference is non-analogous art to the claimed invention and, therefore, should not be considered at all when

evaluating the patentability of the claimed invention, (2) even if the Bond reference is properly considered, the teachings thereof diverge from the teachings of the Joao reference and, consequently, cannot be properly combined therewith, and (3) even of the teachings of the Bond reference are properly combined with the teachings of the Joao reference, the claimed invention is not obvious in light thereof.

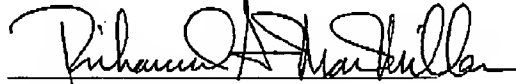
The Examiner has completely failed to properly respond to the applicants' position that the Bond reference is non-analogous art to the claimed invention and, therefore, should not be considered at all when evaluating the patentability of the claimed invention. The lack of any indication by the Examiner regarding this non-analogous art position obviously adversely affects applicants' ability to reply to the Office Action pursuant to Section 710.06 of the M.P.E.P. Thus, it is respectfully requested that the Examiner issue a new non-final Office Action that addresses the applicants' non-analogous art position.

Similarly, the Examiner has completely failed to properly respond to the applicants' position that even if the Bond reference is properly considered, the teachings thereof diverge from the teachings of the Joao reference and, consequently, cannot be properly combined therewith. The lack of any indication by the Examiner regarding this improper-to-combine position also obviously adversely affects applicants' ability to reply to the Office Action pursuant to Section 710.06 of the M.P.E.P. Thus, it is respectfully requested that the Examiner issue a new non-final Office Action that addresses the applicants' improper-to-combine position.

Lastly, although it is not entirely clear from the Office Action, it appears from Paragraph 9 of the Office Action that the Examiner is giving the term "a benchmark heuristic to generate a benchmark" no patentable weight. Clarification is requested. If this is the case, however, this conclusion is respectfully traversed. The terminology used in each of the independent claims is not merely a statement of intended use, but

rather a useful, concrete, and tangible result or element of the invention. Thus, the Examiner's rejection under 35 U.S.C. 103 is untenable and should be withdrawn.

Respectfully submitted,



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